

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Development of Nationwide Broadband Data to	)	WC Docket No. 07-38
Evaluate Reasonable and Timely Deployment of	)	
Advanced Services to All Americans, Improvement	)	
of Wireless Broadband Subscribership Data, and	)	
Development of Data on Interconnected Voice over	)	
Internet Protocol (VoIP) Subscribership	)	

**ORDER ON RECONSIDERATION**

**Adopted: June 11, 2008**

**Released: June 12, 2008**

By the Commission: Commissioners Cops and Adelstein issuing separate statements.

**I. INTRODUCTION**

1. In this *sua sponte* Order on Reconsideration, we revise one of the reporting requirements of Form 477 adopted in the 2008 *Form 477 Order*.<sup>1</sup> Specifically, as set forth in more detail below, we expand the collection of broadband connections data as adopted in the *Form 477 Order* to collect, in addition, the percentage of such connections that are residential.

**II. BACKGROUND**

2. The Commission began collecting data from broadband Internet service providers using Form 477 in May 2000 as a means to help the Commission and the public understand the extent of broadband deployment nationwide. Broadband service providers and local telephone service providers have reported data numerous times since then.<sup>2</sup> The reporting entities include incumbent and competitive local exchange carriers (LECs), operators of terrestrial and satellite wireless facilities, cable companies, municipalities, and any other facilities-based providers of broadband connections to end users.<sup>3</sup>

3. In April of 2007, we issued a Notice of Proposed Rulemaking in which we questioned whether the information collected by Form 477 provides a sufficiently complete and accurate picture of broadband deployment, particularly with regard to deployment and adoption in rural areas, and the increasing use of wireless broadband and VoIP applications.<sup>4</sup> In the *Data Gathering Notice*, we proposed

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<sup>1</sup> *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 (rel. June 12, 2008) (*Form 477 Order*).

<sup>2</sup> Service providers filed Form 477 data for the first time on May 15, 2000, to report connections as of December 31, 1999. Since then, providers have filed mid-year data each September 1 and year-end data each March 1.

<sup>3</sup> *Local Telephone Competition and Broadband Reporting*, Report and Order, WC Docket No. 04-141, 19 FCC Rcd 22340, 22384 (2004) (*2004 Order*).

<sup>4</sup> *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed (continued....)

modifying Form 477 in several respects to improve the quality of the data collected. Information about broadband availability and deployment throughout the nation, in all its forms, is essential to the Commission to assess the success of our broadband policies, and to fulfill our obligations under section 706 of the Telecommunications Act of 1996.<sup>5</sup> Accordingly, in the *Data Gathering Notice*, we solicited comment about options for collecting broadband deployment information in finer geographic detail.<sup>6</sup> The *Data Gathering Notice* sought comment on ways to improve the quality of data collected concerning wireless broadband Internet access service,<sup>7</sup> asked if alternative speed tier information should be collected,<sup>8</sup> and asked how best to collect information about subscribership to interconnected VoIP service.<sup>9</sup> Generally, the *Data Gathering Notice* solicited comment about the balance between the benefits of these additional data collections and any burdens such collections may impose.

4. In March of 2008, we adopted a Report and Order and Further Notice of Proposed Rulemaking in which we modified the information collected by Form 477 to increase the precision and quality of broadband subscribership data collected by the Commission to track broadband deployment nationwide.<sup>10</sup> The *Form 477 Order*, among other refinements, increased the granularity of reporting to the level of Census Tracts,<sup>11</sup> increased the number of speed tiers used to report subscriber counts and required reporting of both download and upload transfer rates,<sup>12</sup> and amended the reporting requirements of mobile wireless broadband providers to create a separate category of reporting for subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice.<sup>13</sup>

### III. DISCUSSION

5. Pursuant to section 1.108 of the Commission's rules,<sup>14</sup> we reconsider on our own motion the reporting requirements of Form 477 as adopted by the *Form 477 Order*. In particular, we expand the

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Rulemaking, 22 FCC Rcd 7760, 7765-66, paras. 10-12, 22 (2007) (*Data Gathering Notice*). Also, the United States Government Accountability Office (GAO) has reviewed the strengths and weaknesses of data about broadband availability, including data collected using FCC Form 477, and has concluded that, while broadband deployment is extensive nationwide, it remains very difficult to assess the extent of deployment gaps in rural areas. *Id.* at 7764, para. 6 n.22 (citing United States Government Accountability Office, *Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, GAO-06-426 (May 2006)).

<sup>5</sup> 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

<sup>6</sup> *Data Gathering Notice*, 22 FCC Rcd at 7774, para. 31.

<sup>7</sup> *Id.* at 7766-69, paras. 11-17.

<sup>8</sup> *Id.* at 7769-70, paras. 18-21.

<sup>9</sup> *Id.* at 7770, para. 22.

<sup>10</sup> *See Form 477 Order*.

<sup>11</sup> *Form 477 Order*, paras. 10-16.

<sup>12</sup> *Id.* at paras. 19-22.

<sup>13</sup> *Id.* at paras. 23-24.

<sup>14</sup> 47 C.F.R. § 1.108 (“The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules.”); *see also Sprint Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003) (stating that notice and comment is not required before an agency may take action on reconsideration in certain contexts, such as informal adjudications and policy statements).

*Form 477 Order's* broadband connection reporting requirement to also require reporting of the percentage of residential broadband connections.<sup>15</sup>

6. While comments in the record for the *Form 477 Order* show support for distinguishing residential services from business services,<sup>16</sup> the Commission simply maintained the pre-existing requirement to report the percentage of residential broadband connections at the state level.<sup>17</sup> On May 13, 2008, after the Commission adopted the *Form 477 Order*, representatives from AT&T and Free Press met with the Commission to discuss the feasibility of extending the existing requirement that providers report state-wide percentages of residential lines to the Census Tract level.<sup>18</sup> These parties proposed an approach that, subject to certain assumptions, would enable reporting of the percentage of residential broadband connections at the Census Tract level.<sup>19</sup> We find that proposed approach reasonable, and therefore adopt such a requirement, as discussed below.

7. On reconsideration, we conclude that extending the existing residential percentage reporting requirement will improve our understanding of the scope of broadband deployment and will assist the Commission's ongoing efforts to foster increased deployment of broadband services to residential customers in accordance with the Commission's obligation under section 706 of the Telecommunications Act of 1996,<sup>20</sup> to an extent that outweighs the cost to providers. We therefore require wired, terrestrial fixed wireless, and satellite broadband service providers to report, for each Census Tract and each speed tier in which the provider offers service, the number of subscribers and the percentage of subscribers that are residential.<sup>21</sup> For terrestrial mobile wireless broadband service providers, which only report broadband connection at the state level under the *Form 477 Order* as adopted, we do not modify the obligation for such providers to report percentage of residential broadband connections at the state level.<sup>22</sup> As in the *Form 477 Order*, we find that granting a blanket exemption to

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<sup>15</sup> See *Form 477 Order*, paras 10-16.

<sup>16</sup> See, e.g., Letter from Christopher J. White, Deputy Public Advocate, New Jersey Division of Rate Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 5 (filed July 16, 2007) (recommending that data for residential customers be reported separately from business customers, because residential customers face different pricing systems and have different needs than business customers, and thus adopt broadband services at different rates, and demonstrate preferences for different speeds and technologies).

<sup>17</sup> *Form 477 Order*, para. 14 n.47.

<sup>18</sup> Letter from Frank Simone, AT&T Services Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 1, filed May 13, 2008 (AT&T and Free Press May 13, 2008 *Ex Parte*). The pre-existing FCC Form 477 data collection likewise recognized that good faith estimates may be necessary to provide residential percentages of broadband connections even at the state level. FCC Form 477 Instructions at 5.

<sup>19</sup> *Id.* at 1-2.

<sup>20</sup> Section 706 of the Telecommunications Act of 1996 requires the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996))

<sup>21</sup> The *Form 477 Order* created an alternative form of reporting this information which we retain but modify slightly here. See *Form 477 Order*, paras. 15, 32. Upon a showing of significant hardship, reporting entities may report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address and whether the subscriber at that service address is a residential or business subscriber, in lieu of the requirement to report subscriber counts and percentage residential by Census Tract and speed tier.

<sup>22</sup> Mobile wireless service providers are required to report the number of connections they provide in each state in which they offer service, along with the percentage of connections by speed tier within that state that are residential. See *Form 477 Order*, paras. 16, 23-24. Mobile wireless service providers are also required to report the Census (continued....)

small carriers would undercut the benefits of our revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact.<sup>23</sup> Additionally, we note that all Form 477 filers must currently submit, for each state in which they provide service, the percentage of their broadband subscribers that are residential. We conclude that any incremental burden associated with providing this information on the Census Tract basis is outweighed by the utility of the data we will obtain. We thus apply the revised requirement to all broadband service providers, regardless of size.<sup>24</sup>

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Analysis

8. Pursuant to the Regulatory Flexibility Act (RFA),<sup>25</sup> the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) for the Order on Reconsideration concerning the possible significant economic impact on small entities by the policies and actions considered in the Order on Reconsideration. The text of the Supplemental FRFA is included in the Appendix.

##### B. Paperwork Reduction Act

9. *Paperwork Reduction Act.* The Order on Reconsideration contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2005, Public Law No. 107-198, see 44 U.S.C. § 3506(c)(4) (SBPRA), we have considered how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” We find that the new and modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the Order on Reconsideration. Pursuant to the SBPRA, we will seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

##### C. Congressional Review Act

10. The Commission will include a copy of this Order on Reconsideration and Further Notice in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. § 801(a)(1)(A).

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Tracts that best represent their broadband service footprint for each of the speed tiers in which they offer service. See *Form 477 Order*, para. 16.

<sup>23</sup> See *Form 477 Order*, para. 32.

<sup>24</sup> However, as noted above, we retain the alternative reporting mechanism adopted in the *Form 477 Order*, expanded, consistent with this Order on Reconsideration, to require that service addresses be identified as either business or residential. See *supra* note 23.

<sup>25</sup> See 5 U.S.C. § 603. The RFA, see U.S.C. §601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (Small Business Act).

**V. ORDERING CLAUSES**

11. Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 11, 201-205, 211, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 161, 201-205, 211, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, this Order on Reconsideration, with all attachments, IS ADOPTED.

12. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.427(b) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.427(b), that this Order on Reconsideration SHALL BE EFFECTIVE 30 days after publication of notice of the Order on Reconsideration in the FEDERAL REGISTER, subject to Office of Management and Budget (OMB) approval for new or modified information collection requirements.

13. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

**Supplemental Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>26</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the April 2007 Data Gathering Notice.<sup>27</sup> The Commission sought written public comment on the proposals in the Data Gathering Notice, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was adopted in conjunction with the Commission's *Form 477 Order*.<sup>28</sup> This present Supplemental FRFA conforms to the RFA, and addresses the new requirements adopted in this Order on Reconsideration.<sup>29</sup>

**A. Need for, and Objectives of, the Order on Reconsideration**

2. In today's Order on Reconsideration, we adopt certain changes to Form 477 to collect additional, improved data on broadband availability and use. We expand the FCC Form 477 data collection adopted in the *Form 477 Order* to collect additional data on the percentage of residential broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."<sup>30</sup>

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. In the *Form 477 Order*, and accompanying FRFA, we discussed the significant issues raised in response to public comments on the IRFA.<sup>31</sup> We received no filings in response to that IRFA.

**C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>32</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

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<sup>26</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

<sup>27</sup> *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760, 7765-66, paras. 10-12 (2007) (*Data Gathering Notice*).

<sup>28</sup> *Form 477 Order Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 (rel. Jun 12, 2008) (*Form 477 Order*).

<sup>29</sup> See 5 U.S.C. § 604.

<sup>30</sup> 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

<sup>31</sup> See generally *Form 477 Order*, App. D.

<sup>32</sup> 5 U.S.C. § 604(a)(3).

organization,” and “small governmental jurisdiction.”<sup>33</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>34</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>35</sup>

5. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>36</sup> According to Commission data,<sup>37</sup> 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

6. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>38</sup> According to Commission data,<sup>39</sup> 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees.<sup>40</sup> In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>41</sup> The SBA’s Office of Advocacy contends

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<sup>33</sup> 5 U.S.C. § 601(6).

<sup>34</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>35</sup> 15 U.S.C. § 632.

<sup>36</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>37</sup> *Trends in Telephone Service* at Table 5.3.

<sup>38</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>39</sup> *Trends in Telephone Service* at Table 5.3.

<sup>40</sup> *Id.*

<sup>41</sup> 5 U.S.C. § 601(3).

that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>42</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>43</sup> According to Commission data,<sup>44</sup> 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

9. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>45</sup> According to Commission data,<sup>46</sup> 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

10. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>47</sup> According to Commission data,<sup>48</sup> 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

11. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>49</sup> According to Commission data,<sup>50</sup> 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21

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<sup>42</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>43</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>44</sup> *Trends in Telephone Service* at Table 5.3.

<sup>45</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>46</sup> *Trends in Telephone Service* at Table 5.3.

<sup>47</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>48</sup> *Trends in Telephone Service* at Table 5.3.

<sup>49</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>50</sup> *Trends in Telephone Service* at Table 5.3.

have more than 1,500 employees.<sup>51</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

12. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>52</sup> According to Commission data,<sup>53</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

13. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>54</sup> According to Commission data,<sup>55</sup> 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

14. *800 and 800-Like Service Subscribers*.<sup>56</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>57</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>58</sup> According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

## 1. Wireless Carriers and Service Providers

15. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily

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<sup>51</sup> *Id.*

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>53</sup> *Trends in Telephone Service* at Table 5.3.

<sup>54</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>55</sup> *Trends in Telephone Service* at Table 5.3.

<sup>56</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>57</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>58</sup> *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

16. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>59</sup> Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>60</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>61</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>62</sup> For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>63</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>64</sup> Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.<sup>65</sup> We have estimated that 221 of these are small, under the SBA small business size standard.<sup>66</sup> Thus, under this category and size standard, about half of firms can be considered small. This information is also included in paragraph 23.

17. *Common Carrier Paging*. The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees.<sup>67</sup> According to Commission data,<sup>68</sup> 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special

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<sup>59</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>60</sup> 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

<sup>61</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>62</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>63</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>64</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>65</sup> *Trends in Telephone Service* at Table 5.3.

<sup>66</sup> *Id.*

<sup>67</sup> 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>68</sup> *Trends in Telephone Service* at Table 5.3.

provisions such as bidding credits and installment payments.<sup>69</sup> A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>70</sup> The SBA has approved these small business size standards.<sup>71</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>72</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

18. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.<sup>73</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

19. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.<sup>74</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>75</sup> According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.<sup>76</sup> We have estimated that 221 of these are small under the SBA small business size standard.

20. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar

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<sup>69</sup> *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (*220 MHz Third Report and Order*).

<sup>70</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>71</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

<sup>72</sup> *Id.* at 10085, para. 98.

<sup>73</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>74</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>75</sup> *Id.*

<sup>76</sup> *Trends in Telephone Service* at Table 5.3.

years.<sup>77</sup> For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>78</sup> These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.<sup>79</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>80</sup> On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

21. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>81</sup> A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.<sup>82</sup> In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

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<sup>77</sup> See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

<sup>78</sup> *Id.*

<sup>79</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

<sup>80</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

<sup>81</sup> *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

<sup>82</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

22. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.<sup>83</sup> The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

23. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>84</sup> This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>85</sup> A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.<sup>86</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>87</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>88</sup>

24. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.<sup>89</sup> These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR

<sup>83</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>84</sup> *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, at paras. 291-95.

<sup>85</sup> *Id.* at 11068-70, para. 291.

<sup>86</sup> See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>87</sup> See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

<sup>88</sup> *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

<sup>89</sup> 47 C.F.R. § 90.814(b)(1).

bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

25. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>90</sup> A “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>91</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>92</sup>

26. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>93</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>94</sup> The Commission uses the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.<sup>95</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.<sup>96</sup> We will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.<sup>97</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

28. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has

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<sup>90</sup> See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

<sup>91</sup> See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

<sup>92</sup> *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (2001).

<sup>93</sup> The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

<sup>94</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

<sup>95</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>96</sup> The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

<sup>97</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>98</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>99</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

29. *Fixed Microwave Services.* Fixed microwave services include common carrier,<sup>100</sup> private operational-fixed,<sup>101</sup> and broadcast auxiliary radio services.<sup>102</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>103</sup> The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common

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<sup>98</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>99</sup> *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

<sup>100</sup> See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>101</sup> Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

<sup>102</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

<sup>103</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

carrier microwave fixed licensee category includes some large entities.

30. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>104</sup> There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>105</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>106</sup>

31. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>107</sup> An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>108</sup> The SBA has approved these small business size standards.<sup>109</sup> The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

32. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service ("BRS"), formerly Multipoint Distribution Service ("MDS"),<sup>110</sup> and the Educational Broadband Service ("EBS"), formerly Instructional Television Fixed Service ("ITFS"),<sup>111</sup> to transmit video programming and provide broadband services to residential subscribers.<sup>112</sup> These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing

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<sup>104</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

<sup>105</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>106</sup> *Id.*

<sup>107</sup> See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600 (1998).

<sup>108</sup> *Id.*

<sup>109</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

<sup>110</sup> MDS, also known as Multichannel Multipoint Distribution Service ("MMDS"), is regulated by Part 21 of the Commission's rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) ("*MDS/ITFS Order*").

<sup>111</sup> ITFS systems are regulated by Part 74 of the Commission's rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

<sup>112</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) ("*2006 Cable Competition Report*").

two-way high-speed Internet access services.<sup>113</sup> We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>114</sup> As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.<sup>115</sup> Other standards also apply, as described.

33. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,<sup>116</sup> the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.<sup>117</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>118</sup> In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.<sup>119</sup> MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission’s auction rules.

34. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).<sup>120</sup> We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

35. In the 1998 and 1999 LMDS auctions,<sup>121</sup> the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar

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<sup>113</sup> *Id.*

<sup>114</sup> See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

<sup>115</sup> 13 C.F.R. § 121.201, NAICS code 517510.

<sup>116</sup> MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

<sup>117</sup> 47 C.F.R. § 21.961(b)(1).

<sup>118</sup> See *ITFS Order*, 10 FCC Rcd at 9589.

<sup>119</sup> 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standards for “other telecommunications” (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

<sup>120</sup> In addition, the term “small entity” under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

<sup>121</sup> The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

years.<sup>122</sup> Moreover, the Commission added an additional classification for a “very small business,” which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.<sup>123</sup> These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA.<sup>124</sup> In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

36. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>125</sup> In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.<sup>126</sup> A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.<sup>127</sup> These size standards will be used in future auctions of 218-219 MHz spectrum.

37. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.<sup>128</sup> We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>129</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

38. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and

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<sup>122</sup> See *LMDS Order*, 12 FCC Rcd at 12545.

<sup>123</sup> *Id.*

<sup>124</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

<sup>125</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>126</sup> *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

<sup>127</sup> *Id.*

<sup>128</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>129</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.<sup>130</sup> “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>131</sup> The SBA has approved these small business size standards.<sup>132</sup> These size standards will apply to the future auction, if held.

## 2. Satellite Service Providers

39. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$13.5 million.<sup>133</sup> The most current Census Bureau data, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both prior categories, such a business was considered small if it had, as now, \$13.5 million or less in average annual receipts.<sup>134</sup>

40. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>135</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>136</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>137</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

41. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>138</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for

<sup>130</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

<sup>131</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

<sup>132</sup> *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

<sup>133</sup> 13 C.F.R. § 121.201, NAICS code 517410 (2007).

<sup>134</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

<sup>135</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>136</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>137</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>138</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

the entire year.<sup>139</sup> Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>140</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

### 3. Cable and OVS Operators

42. In 2007, the SBA recognized new census categories for small cable entities.<sup>141</sup> However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

43. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.”<sup>142</sup> The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.<sup>143</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>144</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>145</sup> Thus, under this size standard, the majority of firms can be considered small.

44. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.<sup>146</sup> Industry data indicate that, of

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<sup>139</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>140</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

<sup>141</sup> 13 C.F.R. § 121.201.

<sup>142</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>143</sup> 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to “Wired Telecommunications Carriers,” NAICS code 517110.).

<sup>144</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>145</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>146</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>147</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>148</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>149</sup> Thus, under this second size standard, most cable systems are small.

45. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>150</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>151</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>152</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>153</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.<sup>154</sup> As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.<sup>155</sup> This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.<sup>156</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are

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<sup>147</sup> These data are derived from R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>148</sup> 47 C.F.R. § 76.901(c).

<sup>149</sup> Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>150</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>151</sup> 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

<sup>152</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>153</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

<sup>154</sup> See 47 U.S.C. § 573.

<sup>155</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>156</sup> See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

#### 4. Electric Power Generation, Transmission and Distribution

47. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”<sup>157</sup> The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”<sup>158</sup> According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.<sup>159</sup> Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

#### 5. Internet Service Providers, Web Portals and Other Information Services

48. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,<sup>160</sup> and (2) All Other Information Services.<sup>161</sup> However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

49. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”<sup>162</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.<sup>163</sup> According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.<sup>164</sup> Of these, 2,437 firms had annual receipts of under \$10

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<sup>157</sup> U.S. Census Bureau, 2002 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF221.HTM>.

<sup>158</sup> 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, footnote 1.

<sup>159</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122 (issued Nov. 2005).

<sup>160</sup> 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

<sup>161</sup> 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

<sup>162</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>163</sup> 13 C.F.R. § 121.201, NAICS code 518111.

<sup>164</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

50. *Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”<sup>165</sup> The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.<sup>166</sup> According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.<sup>167</sup> Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

51. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”<sup>168</sup> The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.<sup>169</sup> According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.<sup>170</sup> Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

52. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”<sup>171</sup> Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.<sup>172</sup> According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.<sup>173</sup> Of these,

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<sup>165</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>166</sup> 13 C.F.R. § 121.201, NAICS code 518112.

<sup>167</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

<sup>168</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>169</sup> 13 C.F.R. § 121.201, NAICS code 518210.

<sup>170</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

<sup>171</sup> U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

<sup>172</sup> 13 C.F.R. § 121.201, NAICS code 519190.

<sup>173</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

53. *Internet Publishing and Broadcasting*. “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”<sup>174</sup> The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.<sup>175</sup> According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.<sup>176</sup> Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

54. In today’s Order on Reconsideration, we expand the requirements adopted in the *Form 477 Order* to require wired, terrestrial fixed wireless, and satellite broadband providers to report the percentage of residential broadband connections they have in service in individual Census Tracts. While both large and small entities will be subject to these reporting requirements, the task is comparably easier for smaller entities that provide service to fewer customers and in more concentrated geographic areas, as the reporting procedures are broken down by geographic region and type of service. Few skills beyond the basic accounting skills already required of Form 477 filers, including small entities, are required to comply with the new and modified reporting and recordkeeping requirements adopted in this Order on Reconsideration.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

55. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>177</sup>

56. In the Data Gathering Notice, we invited comment on a variety of proposals that would impose further reporting and recordkeeping requirements, including alternatives to the measures taken in this Order on Reconsideration.<sup>178</sup> We sought comment whether there are any alternatives to the proposals in the order that would also serve the objective of improving broadband data collection,<sup>179</sup> and we invited

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<sup>174</sup> U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

<sup>175</sup> 13 C.F.R. § 121.201, NAICS code 516110.

<sup>176</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005).

<sup>177</sup> 5 U.S.C. § 603(c).

<sup>178</sup> See *Data Gathering Notice* at section III.B.

<sup>179</sup> See *id.* at para. 38.

comment on ways to mitigate the burden that might be imposed on small entities.<sup>180</sup> We sought comment on how the proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable the Commission to determine whether subscribers in those territories have access to broadband services.<sup>181</sup> To analyze the impact on small entities, the Data Gathering Notice asked whether entities maintain the required information in billing or marketing databases, and asked commenters to demonstrate the burden for the entities to collect and report this type of information.<sup>182</sup>

57. We find that the approach adopted in today's Order on Reconsideration best balances the costs of information collection and the public interest benefits of more detailed information on broadband deployment. As in the *Form 477 Order*, we find that granting a blanket exemption to small carriers would undercut the benefits of our revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. Additionally, we note that all Form 477 filers must currently submit, for each state in which they provide service, the percentage of their broadband subscribers that are residential. We conclude that any incremental burden associated with providing this information on the Census Tract basis is outweighed by the utility of the data we will obtain. We thus apply the revised requirement to all broadband service providers, regardless of size.

58. **Report to Congress:** The Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>183</sup> In addition, the Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.<sup>184</sup>

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<sup>180</sup> See *id.* at para. 24; *see id.* at section III.

<sup>181</sup> See *id.* at para. 24.

<sup>182</sup> See, e.g., *id.* at Appendix, para. 59; *id.* at para. 31.

<sup>183</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>184</sup> See 5 U.S.C. § 604(b).

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, Order on Reconsideration WC Docket No. 07-38*

The Commission is finally launching an effort to collect more granular data on broadband deployment in this country. As I said in March when we approved the broadband data collection Order, it is essential that the Commission be able to distinguish between residential and business broadband connections. Unfortunately, the Commission declined at that time to do so. I'm pleased that the Commission has reconsidered its position and will now require that the data provided identify the extent to which the broadband service is residential rather than business.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip, Order on Reconsideration WC Docket No. 07-38*

Earlier this year, the Commission took an important step by responding to the chorus of voices asking us to collect more accurate and reliable data about broadband deployment. This Commission's new data gathering effort will lay the foundation for developing effective broadband policies. I've long said that a key component of this new broadband data program must include collecting more granular data that enables us to determine who is participating in the broadband revolution and who is not. Though we made important strides toward a more localized understanding of broadband deployment in our March 2008 Order, this Reconsideration Order takes a critical additional step. In fact, without this fundamental change, the usefulness of the improvements we made in March would have been severely compromised. By now distinguishing between residential and business customers at a more granular level, we will be much better positioned to understand the factors that affect broadband adoption. So, I thank the Chairman and my fellow Commissioners for their willingness to address this concern and look forward to the swift implementation of the new data collection program.